

**SAYS FRANK
VERDICT**

**VIOLATES U.S.
LAW**

**SURPRISE IS
SPRUNG**

**BY NEW
ATTORNEYS**

IN COURT THURSDAY

Tye, Peeples & Jordan
Ask

Judge Hill to Set Aside
Ver-

dict Because Frank
Was Not

Present When It Was
Read

JUDGE FIXES WEDNESDAY AS TIME FOR HEARING

Motion for New Trial
Filed by

Arnold & Rosser Set
for

Hearing at Same
Time-Lat-

ter Issue Statement

A motion to set aside the verdict of guilty rendered against Leo M. Frank last August, on the ground that the defendant was not present when the verdict was rendered and that his attorneys

had no right to waive his presence, was filed in the criminal division of the superior court Thursday, before Judge Hill by Attorneys Tye, Peeples, Alexander and others. They have not figured in the case before.

At the same time the extraordinary motion for a new trial based on alleged new evidence, which has already been made public, was filed by the regular counsel for Frank. Judge Hill issued a rule nisi on each motion requiring the solicitor general to show cause next Wednesday why they should not be granted.

The motion to set aside the verdict came as a complete surprise. In the motion, it is asserted, Judge L. S. Roan, the trial judge, requested that Frank not be present at the rendering of the verdict on grounds of possible violence in the event of acquittal, and the same applied to his two leading counsels, Reuben R. Arnold and Luther Z. Rosser.

PRESENCE NOT WAIVED.

Frank didn't know of the agreement to waive his presence, and would have had no right to waive his presence if he had known, the motion asserts. The motion is doubly important to the defendant to the defendant for the reason that attorneys say it contains four Constitutional Points on which the Frank case may be appealed to the supreme court of the United States in event Judge Hill denies both of the motions and the supreme court sustains him in both instances.

The rendition of the verdict without the presence of the accused in court was a violation of a section of the United States Constitution, the motion alleges, in addition to a violation of the state laws.

One of the decisions of Judge Hill himself, when he was on the court of appeals, will play a part in the argument of the motion. This is the case of Lyons vs. the state. Seventh Georgia appeals, page 50. A verdict was then set aside because an attorney, in a telephone conversation with the trial judge, waived the presence of himself and his defendant in the court.

The issuance of the rule nisi automatically stays the execution of Frank, which had been set for Friday, April 17. Frank will have to be called into court again and resentenced in the event he loses both motions.

DORSEY MAKES STATEMENT.

Solicitor General Dorsey, in Valdosta, was informed by long distance telephone from *The Journal* office of the motion, filed by Tye, Peeples & Jordan to set aside the verdict because Frank was no in court when it was rendered.

He dictated the statement and declined to make further comment:

“Under promise by Frank’s attorneys,

(Continued on Page 6, Col. 1.)

PDF PAGE 6, COLUMN 1

CHARGES FRANK VERDICT VIOLATES U.S.
CONSTITUTION

NEW ATTORNEYS SPRING

SENSATION IN CASE

Tye, Peeples and Others De- clare Verdict Void Because Frank Was Absent

(Continued from page One.)

R. R. Arnold and Luther Z. Rosser, that no advantage would be taken of it, and over my protest to the judge against proceeding under that promise, Judge L. S. Roan of his own permitted the second to be absent from court when the verdict was rendered.”

Attorneys Luther Z. Rosser and Reuben R. Arnold issued the following statement in reference to the filing of the motion by Attorneys Tye, Peeples and others to have the verdict set aside:

“The motion this morning filed to set aside the conviction of Leo M. Frank upon the ground, among others, that Frank was not present when the verdict was rendered and did not consent to the return of the verdict in his absence, was filed by Messrs. Tye & Peeples, Alexander and others. We do not appear as counsel in that motion.”

“The extraordinary motion for new trial, based upon newly discovered evidence and other like grounds, was filed by ourselves, together with Mr. Brandon and Messrs. Herbert and Leonard Haas, and is a different proceeding, upon entirely different grounds from the motion to set aside.”

“During the trial of Mr. Frank, the feeling against him on the part of some members of the public was so evident and pronounced as to greatly concern the trial judge for Frank’s safety, in the event of his acquittal. During the trial the judge called attention several times to the danger of having Frank present at the reception of the verdict.”

“Nothing, however, was done about this until the last day of the trial and just a few minutes before the jury was charged. The judge, then in the jury room adjoining the court room, again expressed grave apprehension as to Frank’s safety upon the reception of the verdict, should Frank be present, and there be a verdict of acquittal. We, as two of his counsel were present when the judge so expressed himself and the judge requested us to agree that Frank should not be present when the verdict of the jury was rendered, and that his counsel also should not be present. To this we agreed.”

ACTED ON AGREEMENT.

“Acting upon this agreement made at the suggestion of the judge, Frank was not present at the return of the verdict nor were any of his counsel.”

“There was no request on the part of the judge that we get the personal consent of Mr. Frank to his absence, nor to the agreement made by us.”

The situation was very tense and excitement in the court house and in the streets was great. The charge of the court was just about to begin and was at once given and as soon as given, Frank was carried by the sheriff to the jail. We were intensely absorbed in the events taking place, especially as the charge began just after our conference with the judge ended. In the excitement and confusion and in the multitude of things we had to do and look after, it never occurred to us to mention our agreement with the court either to Mr. Frank or to our associate counsel. As a matter of fact, neither our associate counsel nor Mr. Frank were present when we had the conference with the judge

and Mr. Haas knew nothing about it until after the verdict was received and after the sentence was pronounced.

“Because of our participation in the agreement with the judge, as counsel, we feel that we ought not to take part as attorneys in the motion to set the judgement aside upon the ground of Frank’s absence. This case, however, is an important one to Mr. Frank and we have no right or desire to dictate to him what he ought to do under the circumstances.”

FRANK NOT CONSULTED.

“The case is his, not ours, and it is his life, and not our lives, which is at stake. Frank made no agreement with the court and was asked to make none. If, as a result of what happened, he has been deprived of his legal rights, no fair-minded man can complain when Frank asks the law to correct the wrong done him.”

“The circumstances worked in the case of this man a practical denial to him, as well as to his counsel, of the valuable right to be present when the verdict was received. This condition was brought about by the unjust, excited and prejudiced surroundings which made it impossible to conclude this trial with legal regularity.”

“Under ordinary, sane conditions, no such agreement would have been thought of by court or counsel.”

“The agreement was made and carried out on both sides with the utmost good faith in promotion of what was thought to be in the interest of Frank’s safety and public tranquility.”

The extraordinary motion, based on the ground of newly discovered evidence, was simply filed with the court and ordered served a second time on Solicitor General Dorsey, who was not in court, but who was represented by E. A. Stephens, his assistant.

The action of Judge Hill in setting the two motions means Detective William J. Burns is practically forced to disclose any new

evidence he may have discovered by that date, that it may be incorporated into amendments of the extraordinary motion.

When Judge Hill took the bench Thursday morning, the first matter broached was the motion to set aside the verdict. This was read the court by Attorney Tye.

Then Attorney Luther Z. Rosser filed the extraordinary motion, which was not read to the court.

This had been forecasted in detail by the papers. It was based on the statement of Dr. H. F. Harirs that in his opinion the hair found on the lathe in the National Pencil factory did not look like that of the murdered girl, Mary Phagan; on the statement of Mary Rich, a Negro woman, that she saw Jim Conley, the Negro accuser of Frank, emerge from the basement back door of the pencil factory at 2:20 o'clock on the afternoon of the murder; and on other points already revealed to the public.

R. R. Arnold, of counsel for the defense, presented to the court an order appointing the court reporter, D. O. Smith, a commissioner to take evidence from Dr. H. F. Harris, Mary Rich and E. A. Stephens, assistant solicitor. The attorney said they had declined to give affidavits on points desired by the defense. Judge Hill suggested that the order be shown first to the solicitor for his comment. Mr. Arnold replied the solicitor was not in court. The judge suggested the assistant solicitor be shown the order, but Mr. Arnold said he was one of the witnesses from whom it was desired to take testimony.

From the bench, Judge Hill stated with emphasis that the arguments on both the motion to set aside the verdict and the extraordinary motion for a new trial must proceed next Wednesday morning, unless very good cause arises for delay.

"I will require you gentlemen to proceed with the argument next Wednesday," said the judge. "I have not seen any disposition among you to delay the case unnecessarily, but I want to inform you that this court desires to proceed in it as rapidly as is consistent with justice."

Henry Peeples, of the firm of Tye, Peeples, answering questions by a Journal representative, said his firm entered the case only a few days ago. He admitted the firm is employed by the defense. He would not say whether the firm would take up other angles of the case.

The injection of a Federal Constitutional question into the case is important because it indicates that the fight for Frank's life may be carried upon it to the United States supreme court.

After Judge Hill had signed the order appointing Court Reporter Smith to take testimony and court was adjourned, John Black, a city detective, was examined. His testimony was that he carried to Dr. Harris several days after the crime the hair found on the lathe in the pencil factory.

Mary Rich, the Negress, was not in the court. The defense sent for her. It was stated the defense had learned she had made another affidavit contradicting some points in her affidavit for the defense and had given it to the state.

Here's Full Text Of Motion Asking Verdict Annulment

Now comes Leo M. Frank, the defendant in the above stated cause, against whom in said cause a verdict of guilty of murder was received by the court on August 25, 1913, and moves the court to set aside said verdict for the following reasons.

1. Because at the time that said verdict was received and the jury trying the cause was discharged, this defendant was in the custody of the law and incarcerated in the common jail of said county. He was not present when said verdict was received, and the said jury was discharged, as he had the right in law to be, and as the law required that he should be. He did not waive said right, nor did he authorize anyone to waive it for him, nor consent that he should not be present. He did not even know that said verdict had been rendered and said jury discharged until after the reception of the verdict and discharge of the jury, and until after sentence of death had been pronounced upon him.

2. Because while in point of fact the statements above made are true, yet the presence of this defendant at the reception of said verdict was a legal right of defendant and a requirement of law which could not be waived even by this defendant himself, the charge upon which this defendant was tried being a charge of murder, subjecting him to possible deprivation of his life, and which waiver would be not only a renunciation of a right which the law had established in his favor, but would be a renunciation affecting the public interest.

FRANK NOT PRESENT.

3. Because on the day said verdict was rendered, and shortly before Hon. L. S. Roan, the judge who presided upon the trial of said cause, began his charge to the jury, the said judge, in the jury room of the court house wherein the trial was proceeding, privately conversed with L. Z. Rosser and Reuben R. Arnold, two of the counsel of this defendant, and in said conversation referred to the probable danger of violence that this defendant would be in if he was present when the verdict was rendered in the cause, if said verdict should be one of acquittal, and after said judge thus expressed himself, he the said judge, requested said counsel to agree that this defendant need not be present at the time the verdict was rendered and the said jury polled. Under these circumstances the said counsel did agree with the said judge that this defendant should not be present at the rendition of said

verdict. In the same conversation, the said judge expressed the opinion, also, to said counsel that even the counsel of this defendant might be in danger of violence at the reception of said verdict. Under those circumstances defendant's counsel, said Rosser and said Arnold, did agree with the said judge that this defendant should not be present at the rendition of the verdict. This defendant was not present at said conversation and knew nothing about the same or of any agreement made, as above stated, until after the verdict was received and the jury discharged, and until after sentence of death was pronounced upon him.

Pursuant to the conversation above stated, neither the said Rosser nor the said Arnold, nor Herbert J. Haas, who were the sole counsel of this defendant in said cause, were present when the said verdict was received and said jury discharged; nor was this defendant present when said verdict was rendered and the said jury discharged. Defendant says he did not give to said counsel, the said Rosser and the said Arnold, nor to any one else any authority to waive or renounce the right of this defendant to be present at the reception of said verdict, or to agree that this defendant should not be present thereat; and the relation of attorney and client did not give them such authority, though said counsel acted in the most perfect good faith and in the interest of the personal safety of this defendant. Neither the said conversation, nor the purport thereof was communicated to said Haas, nor did said Haas know thereof until after sentence was pronounced on defendant.

GAVE NO AUTHORITY.

Defendant did not give to said Rosser, nor to said Arnold, nor to said Haas, any authority to themselves be absent when said verdict was received, nor did he agree that they or either of them might be so absent.

The said agreement, made by the said Rosser and the said Arnold, even if otherwise it could be of any binding force and effect, upon this defendant, was of no legal force and effect, so

far as the presence of this defendant as the reception of said verdict was concerned, because the same was made under and because of the said statement, made as above stated to the said Rosser and the said Arnold by the judge who was presiding upon and at said trial, that there was probable danger of violence to this defendant should he be present when said verdict as rendered, should the verdict be one of acquittal, and because they, the said Rosser and the said Arnold were induced to make said agreement because of said statement so made to them, believing the same to be true and believing that for this defendant to be so present, if the verdict should be one of acquittal, might subject this defendant to serious bodily harm and even to the loss of life.

4. Defendant says upon and because of each of the grounds above stated and, also, upon and because of all of them, the said verdict was and is of no legal force and effect and the same is void.

That the reception of said verdict, in the involuntary absence of this defendant, while he was so, as aforesaid, in the custody of the law and incarcerated in jail, was contrary to law and was in violation of the legal rights of this defendant.

NOT CONSTITUTIONAL.

Defendant says that the reception of said verdict in the involuntary absence of this defendant while he was so confined in jail, was in violation of and contrary to the provisions of article 1, section 2 of paragraph 3 of the Constitution of the State of Georgia providing that "no person shall be deprived of life, liberty or property, except by due process of law," the said reception of said verdict during the involuntary absence of this defendant and while he was confined in jail depriving the proceedings against him of the character of a trial to which he was entitled under the law, and depriving him of the hearing and the opportunity to be heard in his own defense to which he was entitled under the law and to which he was entitled under the said provision of the Constitution of the State of Georgia.

Defendant says that the said reception of said verdict in the involuntary absence of this defendant while he was so confined in jail, was in violation of and contrary to the provisions of article 6, section 18, paragraph 1 of the Constitution of the State of Georgia, that "the right of trial by jury, except where it is otherwise provided in this Constitution, shall remain inviolated," because the right of trial by jury under the laws of the State of Georgia extended to and covered with its protection the right of this defendant to be present in person at the reception of the verdict against him in said cause, and because the reception of said verdict during the involuntary absence of this defendant and while he as so confined in jail was in violation of the right of trial by jury to which this defendant was entitled, said right including the right of this defendant to be present at the reception of the said verdict and to be then and there heard in his own defense.

DEPRIVED OF RIGHTS.

Defendant says that the said reception of said verdict in the involuntary absence of this defendant, while he was so confined in jail, tended to deprive him of his life and liberty without due process of law, and that the same denied to him the equal protection of the fourteenth amendment to the Constitution of the United States, to wit: "Nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws," the said reception of said verdict during the involuntary absence of this defendant and while he was confined in jail depriving the proceedings against him of the character of a trial to which he was entitled under the law and depriving him of the hearing and the opportunity to be heard in his own defense to which he was entitled under the law and to which he was entitled under the said provision of the Constitution of the United States and this defendant claims the protection of said provision.

5. Defendant says that the said reception of said verdict in the involuntary absence of this defendant and while he was so incarcerated in jail, and in the said absence of this defendant's

counsel under the circumstances as above stated, was contrary to and in violation of the provisions of Article 1, section 1, paragraph 5 of the Constitution of the State of Georgia, to wit: "Every person charged with an offense against the laws of this state shall have the privilege, and defendant under and because of the said circumstances as above set forth was deprived of the presence of his counsel and of the benefit of counsel at the reception of said verdict, to which he was in law and under said Constitutional provision entitled; and for and because of the same said conditions and circumstances the reception of said verdict was in violation of the provisions of the fourteenth amendment of the Constitution of the United States: "nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws," in that this defendant was under the said conditions and circumstances deprived of the right to the benefit of counsel and of the presence of his counsel at the reception of said verdict, and defendant claims the protection of the said amendment.

JUDGE NOT CONVINCED.

6. Because the said judge, Hon. L. S. Roan, upon considering the motion for a new trial made by this defendant, after the reception of said verdict as above stated, rendered his judgement denying said motion and in rendering said judgement stated that the jury was found the defendant guilty; that he, the said judge, had thought about this cause more than any other he had ever tried; that he was not certain of the defendant's guilt; that with all the thought he had put on this case, he was not, thoroughly convinced that Frank was guilty or innocent, but that he did not have to be convinced; that the jury was convinced; that there was no room to doubt that; that he felt it to be his duty to order that the motion for a new trial be overruled. This defendant says that under the provisions of the fourteenth amendment to the Constitution of the United States, no state could deprive this defendant of his life or liberty without due process of law, nor deny him the equal protection of the laws, and that, he has not

been afforded due process of law, and that he has been denied the equal protection of the laws, in that the said judge, in so as aforesaid, denying to him a new trial in said cause, did not, as shown by his said statement, give to this defendant the judicial determination of said motion to which defendant was entitled by law; that said judge being constituted by law as one of the triors did not afford to this defendant the protection which the law guarantees, the law being that defendant is entitled to the benefit or every reasonable favor, and the trial judge, though entertaining the doubt which he felt as to this defendant's guilt, and nevertheless denying to him a new trial, by said action denied to this defendant the fair and lawful trial he is entitled to, and thereby this defendant has been denied the due process of law.

PUBLIC MADE NOISE.

7. Because that fair and impartial trial was not accorded defendant which is guaranteed to him by the Constitution of the United States, as contained in the fourteenth amendment to said Constitution, to wit: "nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." In support of this ground movest alleges that the court room wherein this trial was had had a number of windows on the Pryor Street side looking out on a public street of Atlanta, and furnishing easy access to any noises that might occur upon the street; that there is an open alleyway running from Pryor Street on the side of the court house, and there are windows looking out from the court room into this alley, and that crowds collected therein, and any noises in this alley could be heard in the court room; that these crowds were boisterous, and that on the last day of the trial after the case had been submitted to the jury, a large and boisterous crowd of several hundred people were standing in the street in front of the court house, and as the solicitor general came out greeted him with loud and boisterous applause, taking him upon their shoulders and carrying him across the street into a

building wherein his office was located; that this crowd did not wholly disperse during the interval between the giving of the case to the jury and the time when the jury reached its verdict, but during the whole of such time a large crowd was gathered at the junction of Pryor and Hunter streets; that several times during the trial, the crowd in the court room, which was audible both to the court and jury, would applaud when the state scored a point; a large crowd of people standing on the outside cheering, shouting and hurraing, and the crowd within the court room signifying their feelings by applause and other demonstrations; and on the trial, and in the presence of the jury, the trial judge in open court conferred with the chief of police of Atlanta, and the Colonel of the Fifth Georgia regiment, stationed in Atlanta, which had the natural effect of intimidating the jury, and so influencing them as to make impossible a fair and impartial consideration of defendant's case; indeed, such demonstrations finally actuated the court in making the request of defendant's counsel, Messers. Rosser and Arnold, as detailed in paragraph three of this motion, to have defendant, and the counsel themselves to be absent at the time the verdict was received in open court, because the judge apprehended violence to defendant and his counsel; and the apprehension of such violence naturally saturated the minds of the jury so as to deprive this defendant of a fair and impartial consideration of his case, which the Constitution of the United States in the fourteenth amendment hereinbefore referred to, entitled him to.

PRESS MADE APPEAL.

On Saturday, August 23, 1913, previous to the rendition of the verdict on August 25, the entire public press of Atlanta appealed to the trial court to adjourn court from Saturday to Monday, owing to the great public excitement, and the court adjourned from Saturday, 12 o'clock p.m., to Monday morning because he felt it unwise to continue the case that day, owing to the great public excitement, and on Monday morning the public excitement had not subsided, and was as intense as it was on

Saturday previous. And when it was announced that the jury had reached a verdict, the trial judge went to the court room and found it crowded with spectators, and fearing violence in the court room, the trial judge cleared it of spectators, and the jury was brought in for the purpose of delivering their verdict. When the verdict of guilty was announced, a signal was given to the crowd on the outside to that effect. The large crowd of people standing on the outside cheering and shouted as the jury was beginning to be polled, and before more than one juror had been polled the noise was so loud and confusion so great that the further polling of the jury had to be stopped so as to restore order, and so great was the noise and cheering and confusion from without that it was difficult for the court to hear the responses of the jurors as they were being polled, though the court was only ten feet distant from the jury. All of this occurred during the involuntary absence of this defendant, he being at the time in the custody of the law and incarcerated in Fulton County jail, his absence from the court room having been requested by the court on account of fear of violence to said defendant as hereinbefore recited.

Wherefore the premises considered, the defendant prays that the said verdict be set aside and go for naught. Defendant prays that a rule be granted calling upon the State of Georgia, by its solicitor general, to show cause at a time to be fixed by the court, why the prayers of this petition should not be granted, and that in the meantime and until the further order of this court the execution of the sentence of death which has been pronounced against this defendant be stayed.

LEONARD HAAS,
TYE, PEEPLES & JORDAN,
H. A. ALEXANDER,
H. J. HAAS.

Attorneys for Leo M.

Frank.
